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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC M. WATKINS,

No. C 10-3802 CW (PR)

Petitioner,

ORDER OF TRANSFER

v.

KELLY HARRINGTON, Warden,

Respondent.

_____/ No. C 10-3803 CW (PR)

Petitioner,

ORDER OF DISMISSAL

v.

A. HEDGPETH, WARDEN HARRINGTON,

Respondents.

_____/

BACKGROUND

Petitioner Eric M. Watkins, a state prisoner incarcerated at Kern Valley State Prison (KVSP), has filed two separate actions in this Court, which were filed under two different case numbers.

In Case No. C 10-3802 CW (PR), Petitioner filed a civil rights complaint form naming the United States District Court for the Eastern District of California as Defendant. In the caption, Petitioner indicates the case number of his habeas corpus action filed in the Eastern District, Case No. 07-767 AWI DLB HC. Because it was filed on a civil rights complaint form, it was opened as a civil rights action in this Court. Petitioner also filed a motion for leave to proceed in forma pauperis (IFP); however, he did not

1 sign the motion. His complaint form is deficient because he has
2 not answered any of the questions on the form aside from his "Place
3 of Confinement" and the "Parties." Petitioner does not allege that
4 he is challenging the conditions of his confinement because he has
5 left blank the entire third page of the form relating to the
6 "Statement of the Claim" and "Relief." Instead, he attaches two
7 typewritten pages addressed to: (1) "Judge Dennis L. Beck" of the
8 Eastern District; and (2) "the State board." A review of the
9 typewritten pages reveals that Petitioner is confused about the
10 status of his petition in the Eastern District. He seems to
11 believe that the Eastern District Court "lost" his petition;
12 however, the Eastern District's electronic database reveals it was
13 dismissed almost three years ago.¹

14 In Case No. C 10-3803 CW (PR), Petitioner filed a habeas
15 petition form naming "A. Hedgpeth" and "Warden Harrington" as
16 Respondents. Again, Petitioner indicates Eastern District Case No.
17 07-767 AWI DLB HC on the caption. He attaches the same two
18 typewritten pages mentioned above. Petitioner has answered some of
19 the questions on the form, but most of them remain unanswered. He
20 claims that he is challenging his "sentence" for "seven years
21 without a strike" and that his place of conviction and sentence was
22 in "Fresno, CA." He also claims that he pled not guilty, had a
23 jury trial, testified at his trial, and appealed his conviction of

24 _____
25 ¹ According to the Eastern District's electronic database,
Case No. 07-767 AWI DLB HC ED was dismissed on December 20, 2007
26 for failure to comply with the Eastern District Court's Order
27 Dismissing Petition With Leave to Amend dated July 23, 2007, which
directed Petitioner to complete the entire habeas petition form
because he had left most of the questions on his original petition
form unanswered.

1 sentence. After the following statement on page four: "If you did
2 not appeal, state your reasons," he states: "The Courts of the
3 Federal Eastern District of California, lost my case. I sent for
4 my transcripts and materials, but the Court said they could'nt
5 [sic] find it." (Pet. at 4.) He also marks "YES" when asked if he
6 "previously filed any petitions, applications or motions with
7 respect to this conviction in any court, state or federal;"
8 however, he leaves blank the remaining sections relating to the
9 name of court, nature of proceeding, grounds raised and result.

10 DISCUSSION

11 I. Case No. C 10-3803 CW (PR)

12 Petitioner currently has two separate actions pending,
13 although he meant to file only one habeas action, which is evident
14 from the fact that he indicated the same Eastern District case
15 number on both pleading forms. The second action was opened in
16 error when the Court received a habeas corpus petition form from
17 Petitioner that was intended to be filed as an amended petition in
18 his first action. Petitioner has also filed a motion for leave to
19 proceed IFP.

20 Accordingly, the Clerk is directed to remove Petitioner's
21 habeas corpus petition form as well as his IFP application from
22 Case No. C 10-3803 CW (PR), and to file it as an "Amended Petition"
23 and IFP application in his first action (Case No. C 10-3802 CW
24 (PR)). Case No. C 10-3803 CW (PR) is DISMISSED because it was
25 opened in error.

26 II. Case No. C 10-3802 CW (PR)

27 Because Petitioner's habeas petition filed in Case No. C 10-
28 3803 CW (PR) is now the amended petition in Case No. C 10-3802 CW

1 (PR), his first action is construed as a habeas corpus action
2 instead of a civil right action. The Clerk is directed to
3 reclassify Case No. C 10-3802 CW (PR) as a habeas corpus action.
4 The Clerk is also directed to substitute Warden Kelly Harrington,
5 the current warden of the prison where Petitioner is incarcerated,
6 as Respondent in Case No. C 10-3802 CW (PR) pursuant to Rule 25(d)
7 of the Federal Rules of Civil Procedure. The Court now reviews
8 Petitioner's amended petition.

9 In this habeas action Petitioner seeks to challenge a
10 conviction and sentence incurred in Fresno County. Fresno County
11 is in the venue of the United States District Court for the Eastern
12 District of California. Furthermore, Petitioner is incarcerated at
13 KSVP in Kern County, which is also in the Eastern District.

14 Federal statute allows "the Supreme Court, any justice
15 thereof, the district courts and any circuit judge" to grant writs
16 of habeas corpus "within their respective jurisdictions." 28
17 U.S.C. § 2241(a). A federal petition for a writ of habeas corpus
18 made by a person in custody under the judgment and sentence of a
19 State court is properly filed in either the district of confinement
20 or the district of conviction. Id. § 2241(d). Where a case is
21 filed in the wrong venue, the district court has the discretion to
22 transfer it to the proper federal court "in the interest of
23 justice." See 28 U.S.C. § 1406(a). The Eastern District of
24 California is the proper venue for this action.

25 Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and
26 in the interest of justice, the Clerk is ordered to TRANSFER
27 Petitioner's first action (Case No. C 10-3802 CW (PR)) forthwith to
28 the United States District Court for the Eastern District of

1 California.

2 All remaining motions in Case No. C 10-3802 CW (PR) are
3 TERMINATED on this Court's docket as no longer pending in this
4 district.

5 CONCLUSION

6 For the reasons stated above,

7 1. Petitioner's second action (Case No. C 10-3803 CW (PR))
8 is DISMISSED because it was opened in error. The Clerk is directed
9 to remove Petitioner's habeas corpus petition form from his second
10 action, to file it in his first action (Case No. C 10-3802 CW
11 (PR)), and to docket it as Petitioner's "Amended Petition." The
12 Clerk is further directed to mark it as filed on August 26, 2010,
13 the date it was received by the Court. The Clerk is directed to do
14 the same for the IFP application, which was also filed on August
15 26, 2010. No filing fee is due, and the Clerk shall close the file
16 in Case No. C 10-3803 CW (PR).

17 2. The Clerk is directed to reclassify Case No. C 10-3802 CW
18 (PR) as a habeas corpus action. Warden Kelly Harrington, the
19 current warden of KVSP, the prison where Petitioner is
20 incarcerated, has been substituted as Respondent in Case No. C 10-
21 3802 CW (PR) pursuant to Rule 25(d) of the Federal Rules of Civil
22 Procedure.

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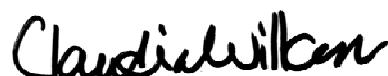
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1 3. The Clerk is ordered to TRANSFER Case No. C 10-3802 CW
2 (PR) to the United States District Court for the Eastern District
3 of California. All remaining motions in Case No. C 10-3802 CW (PR)
4 are TERMINATED on this Court's docket as no longer pending in this
5 district.

6 IT IS SO ORDERED.

7 Dated: 9/14/2010



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ERIC WATKINS.

Plaintiff,

Case Number: CV10-03802 CW

V.

UNITED STATES DISTRICT COURT et al.

Defendant.

CERTIFICATE OF SERVICE

ERIC M. WATKINS

Petitioner,

Case Number: CV10-03803 CW

v.

A. HEDGPETH, WARDEN HARRINGTON,

Respondents.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 14, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Eric M. Watkins D-25198
Kern Valley State Prison
P.O. Box 5103
Delano, CA 93216

Dated: September 14, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk